

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

UNITED STATES OF AMERICA	§	
	§	
v.	§	CRIMINAL NO. 4:06CR228
	§	
GARY DEAN KENNEDY JR. (2)	§	

**REPORT AND RECOMMENDATION  
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on July 12, 2016 to determine whether Defendant violated his supervised release. Defendant was represented by Robert Arrambide. The Government was represented by Ernest Gonzalez.

On February 28, 2007, Defendant was sentenced by the Honorable Richard A. Schell, United States District Judge, to a sentence of 78 months imprisonment for Conspiracy to Manufacture or Possess with Intent to Manufacture or Distribute Methamphetamine, followed by a 5-year term of supervised release. Defendant began his term of supervision on May 23, 2012. This case was re-assigned to the Honorable Marcia A. Crone, United States District Judge, on June 13, 2016.

On June 28, 2016, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender under Supervision (the "Petition") (Dkt. 66). The Petition asserts that Defendant violated the following conditions of supervision: (1) Defendant shall not commit another federal, state, or local crime; (2) Defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any

controlled substances, except as prescribed by a physician; (3) Defendant shall refrain from any unlawful use of a controlled substance; and (4) Defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.

The Petition alleges that Defendant committed the following violations:

At approximately 11:15 p.m. on September 14, 2012, Mr. Kennedy was arrested by the Plano Police Department for the Class C misdemeanor offense of Public Intoxication, in violation of Texas Penal Code Sec. 49.02(a). According to the offense report, officers responded to the Las Brisas Inn, located at 1426 D Avenue in Plano, Texas, in reference to a disturbance call. Upon arrival, the defendant was observed on his knees in the Inn's common area and was found to have blood on his knuckles and lower lip. Officers detected the odor of an alcoholic beverage on Mr. Kennedy and the defendant's speech was extremely slurred as he mumbled incoherently. Witnesses stated the offender was drinking beer and had been attempting to start a fight with other tenants. On September 26, 2012, Mr. Kennedy entered a guilty plea in the City of Pano Municipal Court Cause Number 2012056573 / 12171312 and was sentenced to a deferred disposition contingent on him completing 90 days of probation and paying a \$369 fine.

At approximately 9:30 p.m. on May 24, 2016, Mr. Kennedy was arrested by the Bonham Police Department for Driving While Intoxicated, in violation of Texas Penal Code Sec. 49.04. According to the offense report, officers responded to a reckless driver call and call regarding an unknown vehicle parked in the yard of 1202 North Center Street in Bonham, Texas. Upon arrival, a red 1998 Ford Mustang [TXLP#GNW-3294] was located on the property but the driver was not seen. After officers left the scene initially, the complainant called back and stated the driver had returned and recently drove the vehicle to the nearby Center Street Auto Service parking lot. Officers responded again to the address and observed Mr. Kennedy exiting the driver's seat of the Mustang. The defendant immediately began complaining of chest pains while rolling on the ground and failing to follow simple commands. He denied operating the car and eventually requested medical assistance. EMS personnel arrived on the scene and offender continued to be noncompliant with the requested care. Mr. Kennedy's actions required officers to physically escort him to the ambulance, to the medical center, and attempt to restrain him in order for blood and urinalysis samples to be taken. Mr. Kennedy was ultimately charged with Driving While Intoxicated. Mr. Kennedy posted a \$2,500 bond on May 26, 2016 and, according to the Fannin County Clerk's Office, the case has not been formally filed as of this writing.

On May 30, 2014; June 25, 2014; and May 27, 2016, Mr. Kennedy submitted a urine sample that tested positive for methamphetamine. Mr. Kennedy admitted to said use in each instance.

On June 9, 2014, Mr. Kennedy was detained and questioned by Grayson County Sheriff's Deputies. According to an incident report, deputies responded to a call regarding a male individual walking nude through a wooded area. Upon arrival, deputies located a naked Mr. Kennedy and he appeared intoxicated on an unknown substance. The defendant had superficial cuts on his body and officers were able to locate his vehicle and clothing shortly after. Deputies stood by with Mr. Kennedy until a friend was able to arrive and assist him in getting home. No citation or arrest was made but the offender failed to notify the U.S. Probation Office about this contact as directed.

Dkt. 66.

At the hearing, Defendant entered a plea of true to all alleged violations except the allegations regarding his May 2016 arrest. Defendant waived his right to allocute before the district judge and his right to object to the report and recommendation of this Court. The Court finds that Defendant has violated the terms of his supervised release.

#### **RECOMMENDATION**

Pursuant to the Sentencing Reform Act of 1984 and having considered the arguments and testimony presented at the July 12, 2016 hearing, the Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of eight (8) months, with no supervised release to follow.

**SIGNED this 13th day of July, 2016.**

  
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DON D. BUSH  
UNITED STATES MAGISTRATE JUDGE